

2. This Court has jurisdiction over the Debtor's case and the subject matter of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. §157(b)(2). The statutory basis for the relief sought in this Motion is Section 362(d) of the Bankruptcy Code.

II. FACTUAL BACKGROUND

1. XPV is owed \$5,940,000 plus unpaid interest and costs and expenses on account of certain secured loans (the "Secured Obligations") it made to Debtor Therma-Flite, Inc. (the "Debtor") and the following affiliated Debtors (collectively, with the Debtor, the "Borrowers"):

- a. Therma-Flite Holdings, Inc.;
- b. Therma-Flite Industrial, Inc.;
- c. Therma-Flite Manufacturing, Inc.; and
- d. Therma-Flite TX, Inc.

2. The Secured Obligations are evidenced by the following:¹

- a. Secured Promissory Note payable by the Borrowers to XPV dated September 11, 2015 in the principal amount of \$2,000,000;
- b. Amended and Restated Secured Promissory Note payable by the Borrowers to XPV dated November 25, 2015 in the principal amount of \$4,500,000;
- c. Second Amended and Restated Secured Promissory Note payable by Borrowers to XPV dated February 26, 2016 in the principal amount of \$5,030,000;
- d. Third Amended and Restated Secured Promissory Note payable by the Borrowers to XPV dated May 13, 2016;
- e. Secured Promissory Note payable by the Borrowers to XPV dated May 13, 2016 in the principal amount of \$1,180,000; and

¹ Shortly after the Trustee's appointment, XPV provided copies of all of the loan documents referenced herein to the Trustee's counsel.

- f. Amendment to Third Amended and Restated Secured Promissory Note dated June 29, 2016 increasing the principal amount of the Note to \$4,760,000.

A true and correct copy of each of the above-referenced documents is attached hereto, collectively, as **Exhibit A**. The Secured Obligations were made to provide the Borrowers with working capital so that they could stabilize operations and run a sales process pursuant to which the Debtor and its affiliates would raise additional capital or consummate a sale of equity or a sale of substantially all assets. Unfortunately, the Debtor was unable to raise additional capital or consummate a sale. Accordingly, XPV made a final advance on or about June 29, 2016 to enable the Debtor to satisfy payroll and related obligations. Some portion of XPV's final advance was not utilized by the Debtor and is property of the estate.²

3. To secure the Secured Obligations, each of the Borrowers granted a security interest to XPV in and to substantially all of their property, including general intangibles and intellectual property, pursuant to that certain Security Agreement dated September 11, 2015 (the "**Security Agreement**"), with the exception of "Excluded Property" (as defined therein). The parties subsequently amended the Security Agreement on November 25, 2015 and May 13, 2016. A true and correct copy of the Security Agreement and the amendments thereto are attached hereto, collectively, as **Exhibit B**.

4. XPV perfected its security interest in the Debtor's property by filing a UCC-1 Financing Statement with the California Secretary of State, a true and correct copy of which is attached hereto as **Exhibit C** (the "**Financing Statement**"). XPV also filed UCC-1 Financing Statements with respect to certain of the Borrowers, true and correct copies of which are collectively attached hereto as **Exhibit D**.

² It is XPV's understanding that the Trustee holds cash which is proceeds from sources other than XPV's loan. XPV reserves all rights with regard to funds held by the Trustee from sources other than the XPV loan.

5. The Debtor granted XPV a security interest in patents pursuant to a Patent Security Agreement dated September 11, 2015, a true and correct copy of which is attached hereto as **Exhibit E** and the Debtor granted XPV a security interest in trademarks pursuant to a Trademark Security Agreement dated September 11, 2015, a true and correct copy of which is attached hereto as **Exhibit F**.³

6. In addition to perfecting its security interest in intellectual property, including patents and trademarks, by filing the Financing statement, XPV recorded the Patent Security Agreement and the Trademark Security Agreement with the United States Patent and Trademarks Office (“**USPTO**”). True and correct copies of the filings with the USPTO are collectively attached hereto as **Exhibit G**.

7. In connection with the Secured Obligations, XPV and CFC Inc. (“**CFC**”) entered into that certain Subordination Agreement dated as of September 11, 2015 pursuant to which XPV and CFC agreed to the relative priorities of their respective security interests in and to the Debtor’s and Manufacturing’s assets (the “**Subordination Agreement**”). The Debtor consented to and acknowledged the Subordination Agreement. A true and correct copy of the Subordination Agreement, as amended, is attached hereto as **Exhibit H**. Pursuant to the Subordination Agreement, XPV enjoys a senior, first-priority, security interest in and to certain of the Debtor’s property, including, without limitation all intellectual property owned by the Debtor.

8. CFC filed its Amended Motion For Relief From the Automatic Stay on August 22, 2016 (the “**CFC Relief Motion**”). According to the CFC Relief Motion, the Debtor is indebted to CFC in an amount no less than \$3,400,000.

³ One of the Borrowers, Therma-Flite Manufacturing, Inc. (“**Manufacturing**”) granted XPV a mortgage on certain property owned by Manufacturing in El Dorado (Union County), Arkansas to secure the Secured Obligations.

9. By Notice dated, August 24, 2016, the Trustee abandoned all tangible personal property of the Debtor. Presently XPV is discussing with CFC and other parties in interest the retrieval of tangible personal property. In light of the Trustee's abandonment of tangible personal property, the instant motion relates to intangible personal property, including without limitation, intellectual property.

10. Payment in full on the Secured Obligations was due in full on the August 25, 2016 maturity date. Because no payment on the Secured Obligations has been made to XPV, the Debtor is in default of its obligations to XPV.

III. LEGAL ARGUMENT

11. Section 362(d)(2) of the Bankruptcy Code provides in relevant part:

[A]fter notice and a hearing, the court shall grant relief from the [automatic stay], such as by terminating, annulling, modifying, or conditioning such stay [if]—

(A) the debtor does not have any equity in such property; and

(B) such property is not necessary to an effective reorganization.

11 U.S.C. § 362(d)(1)-(2).

12. Based on the Debtor's obligations to CFC and XPV, the total debt secured by liens on substantially all of the Debtor's assets exceeds \$9,300,000. The Debtor's bankruptcy schedules indicate that all assets held by the Debtor have a value of \$1,997,000. Based on the Debtor's schedules, the Debtor's estate does not have any equity in the Debtor's property.

13. By definition, because this is a chapter 7 case, the Debtor's property is not necessary to an effective reorganization. As a result, XPV requests that this Court grant it relief from the automatic stay.

WHEREFORE, XPV respectfully requests that this Honorable Court enter an order granting relief from the automatic stay to XPV and granting such other and further relief as this Court deems just and proper.

Respectfully Submitted,

BRACEWELL LLP

By: /s/ William A. (Trey) Wood III

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**COUNSEL FOR XPV WATER FUND LIMITED
PARTNERSHIP and XPV WATER FUND (US)
LIMITED PARTNERSHIP**

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that, on or about October 5, 6 and 7, he had email exchanges with counsel for the Chapter 7 Trustee, Ms. Rhonda R. Chandler, who confirmed that, given the facts of this Bankruptcy Case, the Chapter 7 Trustee has no objection to XPV's request for relief from the automatic stay.

By: /s/ Douglas R. Gooding
Douglas R. Gooding

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 11, 2016, a true and correct copy of the foregoing was served by electronic means as listed on the Court's ECF noticing system and via electronic mail or U.S. Mail upon all parties on the attached Master Service List.

By: /s/ William A. (Trey) Wood III
William A. (Trey) Wood III

Label Matrix for local noticing
0541-4
Case 16-33469
Southern District of Texas
Houston
Tue Oct 11 16:12:12 CDT 2016

Texas Workforce Commission
Courtney J. Hull
c/o Sherri K. Simpson, Paralegal
P.O. Box 12548
Austin, TX 78711-2548

8x8 Inc.
Dept. 848080
Los Angeles, CA 90084-8080

Aireark
PO Box 778
Hampton, AR 71744-0778

Airsystem Sales/New York Blower Company
PO Box 1948
Brentwood, TN 37024-1948

Allied Waste Services #210
P.O. Box 78829
Phoenix, AZ 85062-8829

Arkansas Economic Development Commission
900 W. Capitol Ave., Suite 400
Little Rock, AR 72201-1086

Aventine Hill Partners, Inc.
PO Box 678318
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Baldor Electric Company
26827 Network Place
Chicago, IL 60673-1268

BigSteelBox Structures
1631 Dickson Avenue 10th Floor
Kelowna, BC V1Y 0B5 Canada

Bank of the West
c/o David S. Elder
Gardere Wynne Sewell LLP
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Therma-Flite, Inc.
4200 Research Forest Dr.
Suite 350
The Woodlands, TX 77381-4235

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Airgas USA, LLC
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Napa, CA 94559-1426

Alhambra & Sierra Springs
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AmeriGas
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Atlanta Gear Works, Inc.
433 Hightower Parkway
Dawsonville, GA 30534-6194

BDO USA LLP
P.O. Box 31001-0860
Pasadena, CA 91110-0001

Bay Bolt
4610 Malat St.
Oakland, CA 94601-4904

Bradshaw Industrial Supply Inc
15436 27th Court East
Parish, FL 34219-1841

CFC, Inc.
c/o Glast, Phillips & Murray, P.C.
14801 Quorum Drive
Suite 500
Dallas, TX 75254-1449

4
United States Bankruptcy Court
PO Box 61010
Houston, TX 77208-1010

Advanced Machine Corp
1410 Commerce
Benton, AR 72015-5052

(p)AIRGAS USA LLC
110 WEST 7TH STREET
SUITE 1300
TULSA OK 74119-1106

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855 No Parkside Drive
Pittsburg, CA 94565-3734

Aramark Uniform Services
P.O. Box 101338
Pasadena, CA 91189-0005

Atlas Copco Compressor LLC
1800 Overview Drive
Rock Hill, SC 29730-7463

BENDER US
2150 EAST 37th
VERNON, CA 90058-1417

Beitzel Corporation
333 Corporate Drive
Grantsville, MD 21536-1280

Bruce A Freed
26 Biscayne Dr
Ramsey, NJ 07446-2631

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4251 Park Road
Benicia, CA 94510-1100

CCP - California Centrifugal Pump
PO Box 847
Benicia, CA 94510-0847

CFC
15720 Simoni Dr.
San Jose, CA 95127-2748

California Motor Controlsinc
3070 Bay Vista Court Suite C
Benicia, CA 94510-1143

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14904 Collections Center Drive
Chicago, IL 60693-0149

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Red Deer, AB, Canada T4P 2B4

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c/o Collections Department
Boston, MA 02110-4120

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Legal Dept.
900 Cottage Grove Road
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File 50264
Los Angeles, CA 90074-0264

City of Benicia
Business License Renewal #80140170
250 East L Street
Benicia, CA 94510-3239

City of El Dorado, AR
204 North West Avenue
El Dorado, AR 71730-5622

Copytech Services
11 Moore Ct.
Oakley, CA 94561-6339

D & M Electric, Inc.
136 Vanderbilt Drive
Bowling Green, KY 42103-7016

DeZURIK Inc c/o Eco-Tech
8619 Solution Center
Chicago, IL 60677-8006

Delaware Department of Transportation
P.O. Box 697
Dover, DE 19903-0697

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AUSTIN TX 78708-1577

Delta Pump & Systems
PO Box 338
Eighty Four, PA 15330-0338

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Oak Park, MI 48237-3125

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El Dorado, AR 71730-5660

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PO Box 1587
El Dorado, AZ 71731-1587

Elliot Electric Supply
P.O. Box 630610
Nacogdoches, TX 75963-0610

Endress + Hauser, Inc.
Coface North America Insurance Company
50 Millstone Rd., Bldg. 100, Ste. 360
East Windsor, NJ 08520-1415

Endress+Hauser Inc. c/o IPT Group
Dept 78795 / P.O. Box 78000
Detroit, MI 48278-0001

Entergy
PO Box 8101
Baton Rouge, LA 70891-8101

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FORKLIFT MOBILE INC
1080 NIMITZ AVENUE SUITE#130
VALLEJO, CA 94592-1009

Falcon Industries Inc
P O Box 74350
Cleveland, OH 44194-4350

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Houston, TX 77040-3265

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Los Angeles, CA 90074-9647

Franchise Tax Board
PO Box 942857
Sacramento, CA 94257-0531

Fulton
3981 Port Street Box 267
Pulaski, NY 13142-4604

Gardner Denver Nash LLC
P.O. Box 952453
St. Louis, MO 63195-2453

Global Equipment Company
29833 Network Place
Chicago, IL 60673-1298

Goble Sampson Associates Inc.
3500 So. Main Street Suite 200
Salt Lake City, UT 84115-4495

Gordon & Rees
Attn: Marie Holvick
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San Francisco, CA 94111-3361

H & H X-Ray Services Inc
104 Enterprise Street
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HR Direct
PO Box 451179
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HR Options
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Concord, CA 94520-7934

Hayward Pipe & Supply Company
3218 Diablo Ave
Hayward, CA 94545-2780

Hepco
630 East Faulkner
El Dorado, AR 71730-6299

Hill Oil Co
Laurie S. Hinds, Reladyne
9395 Kenwood Rd # 104
Blue Ash, OH 45242-6819

Hill Oil Company LLC
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St. Louis, MO 63195-8384

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Hydradyne, LLC
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Industrial Instrument Co.
5810 Wade Road
Baytown, TX 77521-9743

Infotek Solutions
4747 Research Forest Dr
Suite 180-237
The Woodlands, TX 77381-4912

J.P. Whitney & Associates LLC
Attn: Joyce Ross
17429 State Route 292
Kenton, OH 43326-9059

John Crane Inc
24929 Network Place
Chicago, IL 60673-1249

Joshua R. Scott
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Montgomery, TX 77316-1596

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3041 Conveyor Drive
Burleson, TX 76028-1857

Kadant Johnson Inc.
4989 Solution Center
Chicago, IL 60677-4009

Kadant Johnson Inc.
805 Wood Street
Three Rivers, MI 49093-1011

KallanderGroup, Inc.
282 Central St Unit 9
Hudson, MA 01749-1395

Ken's Discount Building Materials Inc
1200 Northwest Ave.
El Dorado, AR 71730-3852

Kinard's LLC
4905 Junction City Hwy
El Dorado, AR 71730-2242

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2200, 700-6th Ave SW
Canada
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Ladner & Associates PC
The Kirby Mansion 2000 Smith Street
Houston, TX 77002-8652

Lamons Gasket Company
P.O. Box 203061
Dallas, TX 75320-3061

Lippincott Supply Co. Inc.
105 Lincoln Road West
Vallejo, CA 94590-7800

Little Rock Valve & Fitting Swagelok
P O BOX 329
SHAWNEE MISSION, KS 66201-0329

Martin Sprocket & Gear Inc
P.O. Box 974066
Dallas, TX 75397-4066

McMaster-Carr
P.O. Box 7690
Chicago, IL 60680-7690

Memphis Control Center Inc.
P.O. Box 40510
Memphis, TN 38174-0510

Midwest Laboratories
13611 B Street
Omaha, NE 68144-3693

Miller Insulation Co Inc
3520 E Century Avenue
P.O. Box 1393
Bismark, ND 58502-1393

Mistras Group, Inc.
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Motion Industries Inc Ruston Industrial
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4200 Research Forest Drive
Suite 140
The Woodlands, TX 77381-4364

Nord Gear Corporation
PO Box 355
Dubuque, IA 52004-0355

Nord Gear Corporation
c/o Damian Michaelis
800 Nord Drive
Waunakee, WI 53597-9598

Office Depot, Inc.
Account #14631373
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Dallas, TX 75266-0113

Office Equipment of Southern Arkansas
116 Wrights Lane
El Dorado, AR 71730-6858

Omega Engineering Inc
P.O. Box 405369
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Ozark Fluid Power Inc
10801 Otter Creek E. Blvd.
Mabelvale, AR 72103-1671

PERIDOT Precision Mfg
1072 Serpentine Lane
Pleasanton, CA 94566-4731

PPG Protective & Marine Coatings
P O Box 842409
Boston, MA 02284-2409

Pacific Mechanical Supply
13705 Milroy Place
Santa Fe Springs, CA 90670-5130

Pacific Steel & Recycling
1805 U.S. 2
Havre, MT 59501-3311

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Seattle, WA 98175-0268

Pendieco, LLC
c/o Kansas City Value & Fitting
7864 Barton
Lenexa, KS 66214-3403

Phoenix Oil Heater
8282 N. 75th Avenue
Peoria, AZ 85345-8023

Pitney Bowes, Inc.
Acct #2185-4653-86-8
PO Box 371896
Pittsburgh, PA 15250-7896

Pittsburg Winsupply
691 Garcia Ave
Pittsburg, CA 94565-5009

Powerhouse Combustion & Mechanical Corp
3410 W Maywood Ave
Santa Ana, CA 92704-4423

Principal Life Insurance Company
P.O. Box 10372
Des Moines, IA 50306-0372

Process & Power Inc
P.O. Box 18675
Memphis, TN 38181-0675

Pumping Solutions Inc.
1400 S. Vineyard Avenue
Ontario, CA 91761-8042

REXEL Inc
PO BOX 743258
Los Angeles, CA 90074-3258

RWB Contracting
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Astoria, NY 11105-3662

Ray Morgan Company
3131 Esplande
Chico, CA 95973-0202

Ready Refresh by Nestle
P.O. BOX 856680
LOUISVILLE, KY 40285-6680

Reddy Ice Corporation
P.O. Box 730505
Dallas, TX 75373-0505

Reid Supply Company
2265 Black Creek Road
Muskegon, MI 49444-2673

Roustabout Services & Insulation
PO Box 638
Tioga, ND 58852-0638

Royal Wholesale San Leandro
PO Box 14004
Orange, CA 92863-1404

SRP Environmental, LLC
348 Aero Drive
Shreveport, LA 71107-6704

Safety-Kleen
P.O. Box 7170
Pasadena, CA 91109-7170

Salina Vortex Corp
1725 Vortex Avenue
Salina, KS 67401-1768

Senior Flexonics Pathway
2400 Longhorn Industrial Drive
New Braunfels, TX 78130-2530

Shred-it
SHREDIT-IT USA
P.O. Box 101007
Pasadena, CA 91189-1007

Solano County
Dept of Resource Management
675 Texas St., Suite 5500
Fairfield, CA 94533-6341

Southwestern Welding and Machining
2751 South Foster Road
San Antonio, TX 78220-5914

Spraying Systems Co.
PO Box 95564
Chicago, IL 60694-5564

(p)SPRINT NEXTEL CORRESPONDENCE
ATTN BANKRUPTCY DEPT
PO BOX 7949
OVERLAND PARK KS 66207-0949

THERMAL-EDGE, INC.
1751 Hurd Drive
Irving, TX 75038-4300

TJC INC Crane Services
P.O. BOX 962
CAMDEN, AR 71711-0962

TW Telecom
PO Box 172567
Denver, CO 80217-2567

Team Industrial Services
2928 37th St NW #5
Mandan, ND 58554-1315

Texas Workforce Commission
Regulatory Integrity Division - SAU
Room 556
101 E. 15th Street
Austin, TX 78778-0001

The National Board of Boiler & Pressure
Customer #55811
1055 Crupper Avenue
Columbus, OH 43229-1183

The Solid Waste Association of North Ame
1100 Wayne Avenue Suite 650
Silver Spring, MD 20910-5647

Time Warner Cable
Acct#039070101
BOX 223085
Pittsburgh, PA 15251-2085

Top Mop
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Shinde Complex 3rd Floor
Bavdhan Khurd
Pune, India 411021

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P.O. Box 790448
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Houston, TX 77002-2604

Uline
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PO BOX 88741
Chicago, IL 60680-1741

Uline Shipping Supplies
12575 Uline Drive
Pleasant Prairie, WI 53158-3686

Unico Mechanical Corp
PO Box 847
Benicia, CA 94510-0847

Unico Mechanical Corp.
849 Jackson Street
Benicial, CA 94510-2907

Unique Leasing Resource LLC
PO Box 847
Benicia, CA 94510-0847

United Fabrication Technologies
303 Sanderson Lane
Courtland, AL 35618-3441

United Industrial Supply Inc
P O Box 10156
El Dorado, AR 71730-0023

Valley Relocation and Storage
5000 Marsh Drive
Concord, CA 94520-5322

(p)VERICORE LLC
10115 KINCEY AVENUE
SUITE 100
HUNTERSVILLE NC 28078-6482

Verizon Wireless
PO Box 660108
Dallas, TX 75266-0108

Vernon Machine Corp.
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Vortex Corporation
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Salina, KS 67401-1768

W. W. Gay Mechanical Contractor, Inc.
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Jacksonville, FL 32204-2535

W.W. Gay Mechanical Contractor, Inc
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Water Environment Federation
Cusstomer #01798530-0
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Boston, MA 02241-8298

Watlow
36785 Treasury Center
Chicago, IL 60694-6700

Workforce Safety & Insurance
P.O. Box 5585
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Wyatt Murray Electric
627 Matson Drive
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XPV Water Fund (US) LP
c/o Standish Management, LLC
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San Francisco, CA 94111-1527

uniPoint Software, Inc.
1425 Whyte Avenue
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Janet S Casciato-Northrup
Hughes Watters and Askanase
1201 Louisiana
28th Floor
Houston, TX 77002-5607

Mark Curtis Taylor
Waller
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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Airgas USA, LLC
PO Box 676015
Dallas, TX 75267-6015

Dell
Payment Processing Center
P.O. Box 5275
Carol Stream, IL 60197-5275

HEATEC INC
P.O. BOX 2008
CHATTANOOGA, TN 37409

IPFS Corporation
Account #CAF-331588
PO Box 100391
Pasadena, CA 91189-0391

Sprint
Acct #768918981
PO Box 4181
Carol Stream, IL 60197-4181

VeriCore
10115 Kincey Ave. #100
Huntersville, NC 28078

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Badlands Power Fuels, LLC

(u)Historical Arsenal Park

(u)KWS Manufacturing, Ltd.

(u)Staab Construction Corporation

(u)Unico Mechanical Corporation

(u)XPV Water Fund (US) Limited Partnership

(u)XPV Water Fund Limited Partnership

(d)BDO USA LLP
PO BOX 31001-0860
Pasadena, CA 91110-0860

(u)Duck Yufeng

(u)Fike C/O Power Equipment

(u)Peter Commerford

(u)Michael Potter

(u)Randy Potter

End of Label Matrix
Mailable recipients 181
Bypassed recipients 13
Total 194